United States Senate

WASHINGTON, DC 20510

October 21, 2021

Ambassador Katherine Tai
United States Trade Representative (USTR)
600 17th Street, N.W.
Washington, DC 20508

Dear Ambassador Tai:

In response to the United States Trade Representative's (USTR) August 27, 2021 notice on the extension of Section 301 duties for "Certain Products Exclusions Related to COVID-19: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation" (86 FR 48280), we request that the exclusions for finished personal protective equipment (PPE) items and other medical equipment fully expire. Specifically, all imported finished state PPE and key raw material inputs should be assessed 301 penalty duties. These items include single-use N95 and KN95 masks, reusable and surgical masks, surgical gowns, meltblown, and other vital PPE.

Extending the Section 301 tariff exemption on imported essential items manufactured in China would undermine current U.S. manufacturing investments, discourage future domestic investments in PPE production, and harm the national security and economic interests of the United States. Continuing the tariff exemption runs counter to our long-term interests to invest in domestic manufacturing and develop resilient supply chains in the face of a global pandemic and economic recession. Rather than providing relief to Chinese-made products, we should invest in and support our domestic manufacturers so they are capable of providing U.S. health systems and other essential workers with the high-quality PPE and vital supplies they need to manage the COVID-19 pandemic and prepare for future public health threats.

To meet our shared goals for investing in American manufacturing and Building Back Better, we must recognize the investments American workers and domestic industry leaders made during the pandemic. As the virus first spread in the United States and we faced country-wide shortages of PPE, we asked American companies with domestic production capabilities to address these shortages and retool their product lines in service to their country. In response, many companies, including those that previously produced a different product, rapidly transitioned to domestic PPE production. As a result, domestic manufacturing capabilities for essential products like isolation gowns, N95 masks, testing swabs, and other critical products have grown exponentially since the beginning of the crisis. We must consider policies that support health care providers' ability to access quality and affordable PPE.

These companies saved American lives. In the words of one American company owner: "we'll make PPE, because we have the capacity to do it, these products will save lives, and it's the right thing to do as an American company in a time of national crisis, period."[1] We are thankful for the rapid scale-up of domestic PPE production in a matter of months after depending entirely on a

global supply chain for essential PPE and other critical supplies. Nationwide reports of healthcare workers reusing PPE[2] and donning trash bags[3] or plastic ponchos[4] for safety in March and April of 2020 underscore the necessity of domestic PPE production capability. Rather than reverting to the status quo that set us up for shortages of essential supplies and equipment at the beginning of the pandemic, it is time to demonstrate our gratitude to those American workers and companies that saved American lives by supporting their efforts in the face of Chinese anticompetitive practices.

It is not simple for companies to shift their business practices overnight to a different product. In many cases, reconfiguring a manufactured product requires hiring new workers with different skillsets, retraining workers, reconstituting production lines, applying for lengthy and complicated certifications, investing in new equipment or retooling existing equipment, or modifying existing facilities.[5] In some cases over the past two years, entire plant operations were retrofitted and retooled to meet the demand for these life-saving products in partnership with workers and their unions.[6] During the early stages of the pandemic, workers in a wide array of states – including Ohio, West Virginia, Pennsylvania, Wisconsin, New York, Rhode Island, Massachusetts, Connecticut, Vermont, and Maine – spent weeks working to retool their facilities to produce millions of tons of material for PPE to protect our frontline healthcare workers on the job. Our domestic manufacturers' commitment, and the investments of their employees, must not be undermined by maintaining inappropriate tariff exemptions.

Our nation's vulnerable supply chains made investment in domestic PPE production necessary. Before the pandemic, half of the world's sanitary face masks were produced in China and 90 percent of face masks sold in the United States were produced overseas.[7] China's global dominance in this essential production chain meant that as supply chains broke down and global demand for these products spiked, American workers were left vulnerable, placing their health and safety in jeopardy. We now know that at the end of January 2020, the Chinese Communist Party's United Front Work Department orchestrated a global mobilization of thousands of Chinese civic organizations and social media groups across five continents to buy masks and PPE for use in China.[8] Billions of items were sent to China directly, which then contributed to the subsequent global shortages of PPE elsewhere. The Chinese government then restricted exports of domestically produced PPE, including from American and Canadian manufacturers based in China, withholding all masks to selectively ship PPE abroad based on political calculations.[9] The Chinese Communist Party then required profuse public thanks in exchange for the medical equipment, often in signed declarations, as part of a propaganda campaign in the middle of a global crisis.[10]

By excluding PPE under Section 301 tariffs, we left American companies – the same companies that saved American lives when we needed them to – at the whim of the Chinese government's export controls and political calculations. When China eventually removed export restrictions, foreign manufacturers flooded the market with cheaper, often inferior quality, Chinese-made products to compete against high-quality, American-made products, edging them out of the market.[11] This has made it nearly impossible for American companies and their products to compete with subsidized Chinese goods, as hospitals and other health care providers remain especially sensitive to the increased costs associated with the COVID-19 pandemic. Companies

making investments in the United States by manufacturing American-made products with American labor deserve better than that.

Building a robust domestic supply chain means prohibiting anti-competitive PPE production. Once China began dumping lower quality masks onto the American market, those same companies that announced increases in production to save lives announced layoffs in the thousands. As one example, Honeywell initially invested in new plants across Smithfield, Rhode Island, and Phoenix, Arizona, only to announce 1,170 layoffs months later due to a drop in demand for American-made N95 masks.[12] We cannot allow the Chinese government to exploit our economy and public health responsiveness on a whim. Rather, we should make every effort to expand domestic PPE manufacturing capabilities in a sustainable way, while limiting excess, dumped capacity from suppressing domestic capacity.

We must recognize the substantial ability of U.S. suppliers to manufacture lifesaving PPE. The United States currently has the capacity necessary to support domestic PPE products and their components, both currently and during a surge crisis. Many U.S. factories for both the components and finished products are idle or at highly reduced capacity. We should focus on increasing our domestic resilience, not supporting activities which harm our capabilities to address pandemic preparedness and manufacture essential PPE.

The U.S. Food and Drug Administration has already raised quality concerns with healthcare providers about Chinese-made PPE. [13] U.S. agencies have confiscated or rejected millions of units upon importation that do not meet their advertised specifications and, in Fiscal Year 2020, the U.S. Customs and Border Protection confiscated nearly 13 million units of counterfeit face masks, primarily from China.[14] One of China's largest producers of N95 respirators previously certified by the Centers for Disease Control and Prevention's National Institute for Occupational Safety & Health (CDC-NIOSH), Shanghai Dasheng, has since had all of its certifications revoked by CDC-NIOSH due to quality issues.[15] At this time, it would be inappropriate to provide further economic incentives for goods that do not have proper regulatory controls to meet their stated specifications.

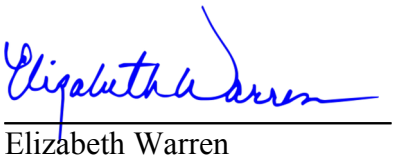
For these reasons, we urge the administration to end these tariff exemptions on certain finished PPE products and raw material inputs, and work with us to address the larger systemic illegal trade practices that have devastated American workers and the manufacturing sector. We are also committed to working with the Biden Administration to ensure health systems, essential workers, and other health care providers have access to a sustainable, affordable supply of the PPE necessary to keep workers and Americans safe as we continue to combat COVID-19 and prepare for the future. On a level playing field, Americans and domestic companies can compete with anyone. USTR must take clear steps to counter anticompetitive behaviors, support domestic companies and American workers, and bolster our domestic manufacturing capacity. Failure to do so leaves the U.S. vulnerable and threatens our national, economic, and health security.

Thank you for your consideration of our views on this important matter.

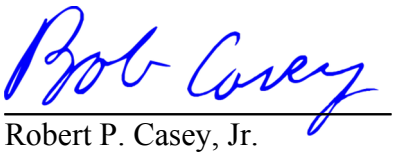
Sincerely,

Sherrod Brown
United States Senator

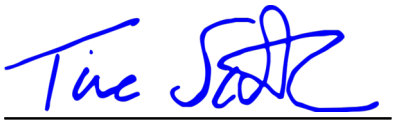
Tammy Baldwin
United States Senator



Elizabeth Warren
United States Senator

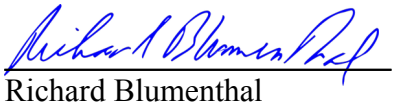


Robert P. Casey, Jr.
United States Senator



Tina Smith
United States Senator

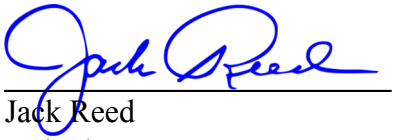
Christopher S. Murphy
United States Senator



Richard Blumenthal
United States Senator

Kirsten Gillibrand
United States Senator

Bernard Sanders
United States Senator



Jack Reed
United States Senator

Edward J. Markey
United States Senator

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